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July 30, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems, RM 9101

Dear Mr. Caton:

Pursuant to the Commission's June 10, 1997 Public Notice in the above-referenced matter, enclosed for filing are an original and four (4) copies of the Reply Comments of Telco Communications Group, Inc., and a diskette containing the Reply Comments in WordPerfect for Windows 5.1 format.

Please date-stamp the enclosed extra copy of the Reply Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

Michael R. Romano

C. Joël Van Over
Michael R. Romano

Counsel for Telco Communications Group, Inc.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition for Expedited Rulemaking	)	
To Establish Reporting Requirements and	)	RM 9101
Performance and Technical Standards for	)	
Operations Support Systems	)	
	)	

REPLY COMMENTS OF TELCO COMMUNICATIONS GROUP, INC.
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING

Telco Communications Group, Inc. ("Telco"), by undersigned counsel and pursuant to the Public Notice issued by the Federal Communications Commission ("Commission") on June 10, 1997, hereby files its Reply Comments in support of the above-referenced LCI International Telecom Corp. and Competitive Telecommunications Association Petition for Expedited Rulemaking ("Petition").

Telco advocates immediate action by the Commission to ensure enforcement of the standard of nondiscriminatory access to Operations Support Systems ("OSS") functions required by the Telecommunications Act of 1996 ("1996 Act"). Telco disputes the contentions made by incumbent local exchange carriers ("ILECs") that the Commission should leave enforcement of this requirement to state proceedings, as only this Commission can effectively compel compliance with the 1996 Act on a nationwide basis. Telco also refutes the arguments advanced by several commenters that mischaracterize this Commission's prior decision to *defer* a national examination of access to OSS functions as a finding that such an examination is unnecessary. Given the overwhelming evidence of discrimination that has been presented by competitive local exchange carriers ("CLECs"), Telco

respectfully submits that the time has come for the Commission to initiate a proceeding to ensure that ILECs are complying with the statutory standard of nondiscrimination.

I. THE COMMISSION SHOULD NOT ABSTAIN FROM ADDRESSING DISCRIMINATION IN THE PROVISION OF ACCESS TO OSS FUNCTIONS.

Many of the ILEC commenters argue that state commissions have the authority, and are better positioned to address, the provision of access to OSS functions by ILECs through regulation of the negotiation and arbitration process.[1] These commenters conclude therefore that this Commission need not intervene to examine whether ILECs are discriminating against CLECs in providing such access. This position contradicts the face of the 1996 Act, which contemplates that the states and this Commission will exercise concurrent jurisdiction over interconnection arrangements, resale, and unbundling of network elements. While the power to oversee negotiations and arbitrations under Section 252 is placed with state commissions,[2] the 1996 Act also provides this Commission with clear authority to "prescrib[e] and enforc[e] regulations to implement the requirements of [Section 251]." *Id.*, at § 251(d)(3).

Section 251 in fact sets forth several bases upon which the Commission may assert authority over unbundled access. Under Section 251(d)(1), the Commission is ordered to take "all actions necessary to establish regulations to implement the requirements of this section." *Id.*, at § 251(d)(1). Accordingly, the Commission has the statutory jurisdiction to implement Sections 251(c)(3) and

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[1] *See, e.g.,* Comments of GTE Service Corporation ("GTE"), at 3; U S West, Inc., at 2; United States Telephone Association ("USTA"), at 7; BellSouth, at 19.

[2] 47 U.S.C. § 252 (1996).

(c)(4) of the 1996 Act,[3] which in turn the Commission has determined require ILECs to provide CLECs with nondiscriminatory access to OSS functions as an unbundled network element or as part of a resale purchase.[4] Similarly, under Section 251(d)(2), the Commission is instructed to consider, "at a minimum, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." *Id.*, at § 251(d)(2). Indeed, the U.S. Court of Appeals for the Eighth Circuit has recently confirmed that the Commission has authority under Section 251(d)(2) to "determin[e] what network elements should be made available for purposes of [unbundled access],"[5] and that the Commission was justified in finding that OSS functions constitute an unbundled network element.[6] Thus, the 1996 Act provides the Commission with authority to establish and enforce the parameters of unbundled access to OSS functions.

The ILECs' claim that state commissions are better positioned than this Commission to remedy discrimination in access to OSS functions is flawed in several respects. First, the state commissions simply do not possess enough information to make a comprehensive determination of whether CLECs are in fact obtaining nondiscriminatory access to OSS functionalities. Disclosure of information relating to OSS functions is a fundamental step in defining and eliminating

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[3] *Id.*, at §§ 251(c)(3) and (c)(4).

[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, at 15763, ¶¶ 516-517 (1996) ("*Local Competition Order*").

[5] 47 U.S.C. § 251(d)(2) *cited in Iowa Utilities Bd. v. FCC*, Nos. 96-3321 (filed July 18, 1997), slip. op. at 103, n.10, and at 119, n.23.

[6] *Iowa Utilities Bd.*, Nos. 96-3321, slip. op., at 130.

discrimination. This Commission can best enforce its *Local Competition Order* and the provisions of Section 251 by requiring each ILEC to fully disclose all information associated with its OSS functions, including information related to internal performance benchmarks, standard intervals for performance, and self-monitoring and self-reporting procedures.[7]

Moreover, the ILECs' position ignores the evidence of ongoing discrimination presented in the Petition and other materials.[8] It is obvious from the circumstances of discrimination described in these documents that proceedings before state commissions have not yet guaranteed that CLECs receive nondiscriminatory treatment in obtaining access to OSS functions. Indeed, these state commissions only analyze the terms of access in reviewing negotiated agreements or arbitrating disputes *prior to* implementation of those terms; they do not generally have the chance to look at how the implementation of those terms compares with the ILEC's self-provisioning of OSS functions *after* an agreement is implemented. In fact, many negotiated and arbitrated agreements simply do not contain performance benchmarks at all, meaning that the state commissions have never even considered access to OSS functions in the context of those agreements. Thus, in contrast

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[7] And apparently, the state commissions do not want this information. While U S West concedes in its Comments that disclosure, or "reporting," has "the potential to be of use in the determination of nondiscrimination and parity of access," it also admits that "State Commissions do not particularly want to have factual performance data provided directly to them in the first instance . . . ." Comments of U S West, Inc., at 8. Given this hesitation by state commissions to review performance data, U S West's statements support the conclusion that this Commission should take the lead in determining whether access to OSS functions is currently being provided on a nondiscriminatory basis.

[8] *See e.g.,* Petition, at 34-84; *Application of SBC Communications Inc., et. al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, Evaluation of the Department of Justice, CC Docket No. 97-121, at 68 and 75 (filed May 16, 1997) ("DOJ Oklahoma Evaluation").

to the state commissions who only analyze access to OSS functions in the context of individual negotiations and arbitrations (and only if the parties present the issue for consideration), this Commission is better situated to make a comprehensive, national review of how *all* ILECs' actually provision access to OSS functions. The Commission should therefore exercise its statutory authority to determine whether ILECs are providing nondiscriminatory access as the 1996 Act requires.

Competitive entrants are not "trying to bypass the state arbitration processes and have the Commission reevaluate state decisions that did not adopt the Petitioners' views."[9] Instead, Telco and other new entrants are simply attempting to ensure that the exact definition of nondiscriminatory access to OSS functions is established on the basis of all relevant information, rather than having nondiscrimination presumed as a result of individual state proceedings that have made little or no examination of how the ILEC actually self-provisions OSS functions. Only this Commission can adequately respond to this national problem by exercising its statutory authority to: (i) require every ILEC to immediately disclose all information relevant to its provision of OSS functions; (ii) prosecute discrimination by ILECs on the basis of the information disclosed; (iii) use this information to promote nationwide technical standardization of OSS interfaces; and (iv) ultimately set national performance benchmarks for the operation of these standardized interfaces. Such action will not usurp state commission regulation of the negotiation and arbitration process, but will instead better enable both this Commission and state commissions to determine whether the negotiated or arbitrated agreements meet the nondiscriminatory standards of the 1996 Act as interpreted by the Commission.

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[9] Comments of GTE, at 3.

II. ILEC COMMENTERS MISCHARACTERIZE THE COMMISSION'S FINDINGS IN THE *SECOND RECONSIDERATION ORDER.*

Telco is struck by how several commenters mischaracterize this Commission's holding in its *Second Reconsideration Order* in its *Local Competition* docket.[10] In the *Second Reconsideration Order*, the Commission ruled that ILECs should provide "equivalent access to OSS functions that an incumbent uses for its own internal purposes or offers to its customers or carriers." *Id.*, at ¶ 9. Several commenters imply, however, that in declining to adopt national performance benchmarks at that time, the Commission simply rejected the notion of national performance benchmarks altogether.[11] When it decided that "access to OSS functions can be provided without national standards,"[12] the Commission did not foreclose the establishment of such standards in response to ongoing discrimination. In fact, the Commission declined at that time to adopt national standards not because it was certain that nondiscriminatory access was being provided by all ILECs, but rather because "such a requirement would significantly and needlessly delay competitive entry." *Id.* To now characterize the Commission's decision in that order as an acknowledgment that "incumbent LECs are providing nondiscriminatory access to OSS functions"[13] is a blatant perversion of the Commission's intent in deferring the adoption of national standards at that time.

Such an analysis also ignores the timing of the *Second Reconsideration Order*. When the

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[10] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration, 11 FCC Rcd 19738 (1996) ("*Second Reconsideration Order*").

[11] *See, e.g.*, Comments of USTA, at 7; BellSouth, at iii; Southern New England Telephone, at 3; Ameritech, at 6; Bell Atlantic and NYNEX, at 2, fn 3.

[12] *Second Reconsideration Order*, at ¶13.

[13] Comments of USTA, at 2.

petitions prompting the *Second Reconsideration Order* were considered by the Commission, the January 1, 1997 deadline for providing nondiscriminatory access to OSS functions had not yet arrived. Thus, the Commission reasonably decided to wait for the deadline before assessing whether ILECs had complied with this requirement. However, almost seven months have now passed since the deadline, and the need for nondiscriminatory performance benchmarks has grown increasingly apparent during this "grace period." While the Commission could defer a thorough examination of access to OSS functions in December 1996, the Commission now has no choice but to act in response to the Petition and other evidence of ongoing discrimination to enforce the requirements set forth in its *Local Competition Order* and the underlying statutory nondiscrimination standard.

III. THE COMMISSION SHOULD TAKE AN ACTIVE ROLE IN POLICING COMPLIANCE WITH THE STATUTORY STANDARD OF NONDISCRIMINATION.

Because state commissions are not as well positioned to respond to ongoing discrimination in the provision of access to OSS, this Commission must take the lead in enforcing the requirements of Section 251. The Commission should not take solace from the argument that ILECs lack any incentive to discriminate in the provision of OSS functions to competitors.[14] If that were the case, it would be unlikely that so many instances of discrimination could be reported to this Commission by CLECs. Moreover, the lack of incentive or intent to discriminate is immaterial. The fact remains that CLECs cannot obtain nondiscriminatory access to OSS functions, notwithstanding the purported good will of the ILECs. Since the result is discriminatory, the Commission should act.

U S West, Inc. contends that Section 271 already provides the Commission with a

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[14] Comments of U S West, Inc., at 21.

mechanism for ensuring that Bell Operating Companies ("BOCs") provide nondiscriminatory access to OSS functions. *Id.* While Section 271 may compel BOCs to improve their provisioning of OSS functions in order to satisfy this element of the competitive checklist,[15] the Commission cannot wait for such applications to address discrimination in the provision of access to OSS functions. As noted above, the record indicates that CLECs are being injured now by ILEC discrimination in the provision of access to OSS functions. Waiting for BOCs to apply for Section 271 authority before examining access to OSS functions will only contribute to the continuing damage that new entrants are suffering as a result of this discrimination.

Thus, the Commission should act in the first instance to mandate that each ILEC fully and publicly disclose information relating to how it accesses OSS for its own operations, and how it provides access to OSS for other carriers. Such disclosure should include revelation of any internal performance benchmarks, intervals for performance, and self-monitoring and self-reporting processes. The disclosure should also include, as Excel accurately notes, "any information that will provide the Commission and CLECs with guidance on the internal administration of the ILEC's OSS processes."[16] Arguments that ILECs are already providing nondiscriminatory access simply cannot be evaluated by the Commission without public disclosure and a thorough examination of the information disclosed.

In addition to this initial disclosure, the Commission should direct ILECs to make updated

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15 *See* 47 U.S.C. § 271(c)(2)(B)(ii) (1996).

16 Comments of Excel Communications, Inc., at 10.

disclosure reports on a periodic basis.[17] As Telco and a number of other carriers pointed out in their initial Comments, the Commission and affected CLECs can only monitor discrimination if disclosure is made a continuing duty for all ILECs.[18] Without periodic reports, an ILEC maintains the ability and the incentive to upgrade its internal OSS efficiency while providing competitors with inferior access to OSS at the previously-reported level of performance.

The Commission must also go beyond disclosure and reporting requirements to ensure that ILECs provide nondiscriminatory access to OSS functions. The Commission should make immediate use of the disclosed information to vigorously prosecute CLEC claims of discrimination by ILECs on an individual basis. Moreover, Telco joins several commenters in urging the Commission to use the disclosed information to either develop technical standards for OSS functions on its own, or to assist the industry's ongoing efforts toward technical standardization of OSS interfaces.[19] Ultimately, the Commission should use the information disclosed by the ILECs to implement permanent national performance benchmarks applicable to all ILECs.

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[17] Even U S West has admitted that "reporting" can be "of use in the determination of nondiscrimination and parity of access." Comments of U S West, Inc., at 8.

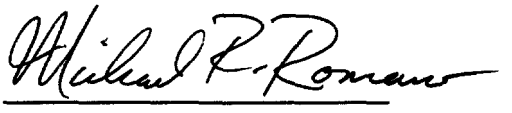
[18] *See, e.g,* Comments of AT&T, at 24-25; Excel, at 11-12; WorldCom, at 6.

[19] *See, e.g,* Comments of WorldCom, at 14; GST Telecom, Inc., at 11; AT&T, at 33-35; American Communications Services, Inc., at 8; WinStar Communications, Inc., at 9-11.

IV. CONCLUSION

Given the overwhelming amount of evidence of discrimination presented by several commenters in this proceeding, the question is not whether discrimination has occurred, but how the Commission should react. As a preliminary matter, the Commission should reject ILEC suggestions to leave enforcement of the statutory nondiscrimination standard to the states. Only this Commission has the comprehensive statutory authority and the national reach to respond adequately to ongoing discrimination in the provision of access to OSS functions. The Commission should therefore act on the Petition to first mandate disclosure by ILECs of all information relating to internal performance benchmarks, intervals for performance, and self-monitoring capabilities. The Commission should then use this information to prosecute individual instances of discrimination by ILECs in providing access to OSS functions, to promote standardization of OSS technical specifications, and ultimately, to develop national performance benchmarks.

Respectfully submitted,



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Dated: July 30, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments of Telco Communications Group, Inc." will be served via U.S. Mail on this the 30th day of July, 1997, on each of the persons listed below.

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